



**DEPARTMENT OF THE NAVY**  
NAVAL FACILITIES ENGINEERING COMMAND  
1322 PATTERSON AVENUE, SE, SUITE 1000  
WASHINGTON NAVY YARD, DC 20374-5065

5720  
Ser BD/107  
OCT 18 2018

Mr. Michael Casey  
25 Northern Avenue, #511  
Boston, MA 02210

Dear Mr. Casey:

Subj: YOUR FREEDOM OF INFORMATION ACT (FOIA); CASE NUMBER  
DON-NAVY-2018-011597

We are writing to respond to your request for "...public records related to dams regulated, owned or operated by the Navy. ...all the data you submit to the Army Corps of Engineers' National Inventory of Dams for high hazard and significant hazard dams, including but not limited to the following fields: State or Federal Agency ID (Alphanumeric), Number Separate Structures (Number), Other Structure ID (Alphanumeric), Nearest Downstream City/Town (Alphanumeric), Distance to Nearest City/Town (Miles, Number), Downstream Hazard Potential (Alphanumeric), Date of Last Revision of Emergency Action Plan (Date), Condition Assessment (Alphanumeric), Condition Assessment Detail {Alphanumeric}, Condition Assessment Date (Number (Alphanumeric), Nearest Downstream City/Town (Alphanumeric), Distance to Nearest City/Town (Miles, Number), Downstream Hazard Potential (Alphanumeric), Date of Last Revision of Emergency Action Plan (Date)[.]"

We have enclosed one record which contains the information you requested, except for Condition Assessment (Alphanumeric), Condition Assessment Detail (Alphanumeric), Condition Assessment Date (Number)" which is partially denied consistent with the US Army Corps of Engineers (USACE) FOIA decision response dated 10 October 2018. Consistent with the USACE response, that information is not being released pursuant to the following exemptions:

- 1) Exemption 3 - (5 U.S.C. § 552(b)(3)). Exemption 3 allows the withholding of information prohibited from disclosure by another federal law. In this case, all of the Condition Assessment data that you requested, is covered by 10 USC 130d, Treatment under Freedom of Information Act of certain confidential information shared with State and local personnel, which provides: Confidential business information and other sensitive but unclassified homeland security information in the possession of the Department of Defense that is shared, pursuant to section 892 of the Homeland Security Act of 2002 (6 U.S.C. 482), with State and local personnel (as defined in such section) shall not be subject to disclosure under section 552 of title 5 by virtue of the sharing of such information with such personnel.
- 2) Exemption 7 - (5 USC 552(b)(7)(F)). Exemption 7 protects law enforcement information that "could reasonably be expected to endanger the life or physical safety of any individual." The U.S. Supreme Court has held that: "the ordinary

understanding of law enforcement includes not just the investigation and prosecution of offenses that have already been committed, but also proactive steps designed to prevent criminal activity and to maintain security.” *Milner v. Department of the Navy*, 131 S. Ct. 1259, 1272 (2011).

The Agency has determined that all of the Condition Assessment data that you requested constitutes law enforcement information, the release of which “could reasonably be expected to endanger the life or physical safety of any individual.” 5 USC 552(b)(7)(F). This determination is based on the following considerations:

- a. The National Inventory of Dams (NID) database contains data on dams that meet the definition of “critical infrastructure,” as defined by the USA Patriot Act of 2001: “Systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. 5195c(e) (Supp. III 2003). The Condition Assessment data in the NID are not publicly available.
- b. The legislation establishing the requirement of the NID, (Public Law 92-367, as amended by Public Law 99-662). Recently, the NID was reauthorized as part of the Water Resources Reform and Development Act of 2014. Public Law 113-121 (Jun. 10, 2014). The establishing legislation of the NID is specifically concerned with the security of structures “likely to pose a significant threat to human life or property.” Specifically, the law provides: “the Chief of Engineers, shall carry out a national program of inspection of dams for the purpose of protecting human life and property. All dams in the United States shall be inspected ... except ... dams which the Secretary of the Army determines do not pose any threat to human life or property.” The Act also states: “[A]fter inspection of a dam, the Secretary shall ... immediately notify the Governor of any hazardous conditions found during an inspection.” The Dam Safety Act of 2006, which reauthorized the National Dam Safety Program including the NID, provides: “The National Dam Safety Program was established to improve safety and security around dams.” Public Law 109-460 (Dec. 8, 2006) (emphasis added).
- c. Department of Homeland Security has convened the Government Coordinating Council – Dams Sector, which has studied the issue of public access to the NID and has issued “Recommendations for Security Controls for Access to the National Inventory of Dams (NID).” Department of Homeland Security, Dams Government Coordinating Council – Information Sharing Workgroup and Asset Identification Workgroup, (August 30, 2006). The recommendations state that the Department of Justice (DoJ), which is the executive agent of the Freedom of Information Act (FOIA), has indicated that many types of homeland security information warrant FOIA exemption (b)(7)(F) protection to include “critical systems, facilities, ... and other assets from security breaches and harm—and in some instances from their potential use as weapons of mass destruction in and of themselves.” Recently, the Department of Homeland Security determined that release of

the Condition Assessment data of the searchable NID electronic database could be misinterpreted by adversaries as potentially highlighting security concerns.

If you consider this to be an adverse determination, you may appeal. Since you have created an account in FOIAonline, you may submit an appeal directly within the web-based system. To do this, you would log in to your account, retrieve your original request, and then click on the "Create Appeal" tab in the left-hand column. The basic information from your request will be duplicated for you, and then you can type in the basis of your appeal. If you prefer to use regular mail, you may submit an appeal to:

The Department of the Navy  
Office of the General Counsel (ATTN: FOIA APPEALS)  
1000 Navy Pentagon, Room 5A532  
Washington, DC 20350-1000

Your appeal, if any, must be postmarked within 90 calendar days from the date of this letter and should include a copy of your initial request, a copy of this letter, and a statement indicating why you believe your appeal should be granted. For any further assistance and to discuss any aspect of your request, you have the right to contact the Department of the Navy FOIA Public Liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil or (703) 697-0031. Additionally, you have the right to contact the Office of Government Information Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-01, ogis@nara.gov; (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

Further questions regarding the action this office has taken may be directed to Abby Machalec, abby.machalec@navy.mil. Please refer to your FOIA case number DON-NAVY-2018-011597 whenever corresponding about this request.

Sincerely,



P. A. POLLOCK  
Chief Management Officer

Enclosure: One PDF Record

Copy to:  
NAVFAC (PW)